

Ram Pyare Singh Vs. Ram Govind and ors.

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Court : Allahabad

Decided On : Feb-14-2006

Reported in : 2006(3)AWC2538

Judge : Anjani Kumar, J.

Acts : Transfer of Property Act - Sections 106 - Order 1, Rule 10; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 8600 of 2006

Appellant : Ram Pyare Singh

Respondent : Ram Govind and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Manish Dev Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Anjani Kumar, J.

1. Heard learned Counsel for the petitioner.

2. The petitioner-tenant aggrieved by an order passed by the trial court and affirmed by the revisional court whereby the revisional court has allowed an application filed by respondents 2 and 3 for impleadment, approached this Court by means of this writ petition under Article 226 of the [Constitution of India](#).

3. The brief facts are that during the pendency of a suit for arrears of rent and eviction it appears that respondents 2 and 3 have purchased 2/3 share of the property in dispute by registered sale deed which is not disputed. An application for impleadment has been filed on behalf of these two persons which has been rejected by the trial court. Aggrieved thereby a revision was filed before the revisional court which is allowed and the matter is remanded back to the trial court to decide afresh in case a fresh application is filed under Order I, Rule 10. Secondly, an application was filed by respondents 2 and 3 for impleadment on the ground that they have purchased 2/3 share of the property in dispute by registered sale deed and after they purchased they came to know that a suit with regard to recovery of rent is pending, they prayed for their impleadment as respondent. 2 and 3 are necessary parties. This application was allowed by the trial court by order dated 29th September 2005. Aggrieved thereby the petitioner preferred a revision before the revisional court which has been rejected by the impugned order dated 10th November, 2005. Learned Counsel for the petitioner has submitted that even assuming that respondents 2 and 3 are bona fide purchaser of the property in dispute, for filing a suit they ought to have served a notice on the petitioner under Section 106 of Transfer of Property Act and by their impleadment at this stage the position in law would be as if notice under Section 106 of Transfer of Property Act stood waived and it is settled law that without serving a notice under Section 106 of Transfer of Property Act no suit for eviction can be filed. Learned Counsel, therefore, submitted that the view taken by the trial court and affirmed by the revisional court, therefore, suffers from manifest error.

4. I have given my considered thought to the aforesaid argument but I do not find any force. By mere impleadment of respondents 2 and 3 it cannot be said that the defence which were available are waived. Petitioner's defence including that of notice are still open. Reading the application filed by respondents 2 and 3 and the order it appears that respondents 2 and 3 have sought impleadment on the ground

that the suit for recovery of rent is pending. In this view of the matter I do not find any error in the orders passed by the trial court and affirmed by the revisional court whereby the Courts have allowed the application for impleadment of the respondents.

5. In view of what has been stated above the writ petition has no force and is accordingly dismissed.

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